IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 6445 of 1989
DATE OF DECISION: 26.12.2007

Dharmendra Singh and another

…Petitioners

Versus

The Director of Higher Education, Haryana and others

…Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

Present: None for the petitioners.

Ms. Ritu Bahri, DAG, Haryana,
for respondent No. 1.

None for respondent Nos. 2 and 3.

JUDGMENT

M.M. KUMAR, J.

This petition filed under Article 226 of the Constitution prays for issuance of a writ in the nature of mandamus directing respondent No. 1 to permit the Principal, D.A.V. College, Pehowa-respondent No. 3 to appoint the petitioners as Lecturers on regular basis and to approve their appointments.

Brief facts of the case are that the D.A.V. College Management Committee-respondent No. 2 advertised two posts of Lecturers in the discipline of Political Science and Commerce in DAV College, Pehowa. The posts in question were advertised on

13.10.1988 in anticipation of transfers of one Lecturer each in Political Science and Commerce from D.A.V. College, Pehowa to D.A.V. College, Ambala City, namely, Shri J.C. Verma and Shri K.C. Kaushik. The advertisement was approved by the Kurukshetra University, Kurukshetra vide its letter dated 7.11.1988. The petitioner No. 1 besides other applicants applied for the post of Lecturer in Political Science whereas petitioner No. 2 applied for that of Lecturer in Commerce. The Selection Committee conducted interviews for the aforementioned posts on 12.12.1988 and 15.11.1988 respectively. It is claimed that keeping in view the merit and suitability of all the candidates, Selection Committee selected the petitioners (P-1). On 18.11.1988 and 14.12.1988, Dean of Colleges, Kurukshetra University, Kurukshetra, approved the recommendations made by the Selection Committee, thereby approving the names of the petitioners alongwith other selected candidates. However, approval of appointment was to be conveyed after all the documents mentioned in the letter dated 18.11.1988 were found to be in order (P-2 & P-3).

At this stage it is pertinent to notice that D.A.V. College, Pehowa, at the relevant time was an affiliated college and the service conditions of its employees were governed by the Haryana Affiliated College (Security of Service) Act, 1979 (for brevity, 'the Act'). Under Sections 3, 4, 5 and 6 of the Act, the State of Haryana-respondent No. 1 has been empowered to lay down various conditions of service in respect of employees of affiliated colleges including Lecturers such as minimum qualifications, method of recruitment,

code of conduct and salary etc. Section 12 of the Act further empowers the Government to issue such directions to the Managing Committee of an affiliated college as may be necessary for proper enforcement of the provisions of the Act. Accordingly, instructions dated 23.12.1987 were issued postulating that no regular appointment was to be made after 15th December and in case the post was to be filled up, prior approval of the Directorate was required to be obtained (P-4).

The petitioners could not be appointed although selected for want of approval concerning transfers of regular incumbents from D.A.V. College, Pehowa to D.A.V. College, Ambala City, from respondent No. 1. The aforementioned transfers were approved by respondent No. 1 only on 20.3.1989 as a result of which appointments of the petitioners could not be made before 15.12.1988. On 27.3.1989, respondent No. 3 sent a letter to respondent No. 1 seeking permission to appoint the petitioners against the vacant posts as per their selection made by the Selection Committee (P-5). However, respondent No. 1 refused to grant approval regarding appointment/joining of the petitioners on their respective posts on the ground that on the date of their selection the posts in question were not actually lying vacant. It is claimed that though respondent No. 1 refused to grant approval but no order in writing to that effect was passed. Faced with this situation, the petitioners have approached this Court.

On behalf of respondent Nos. 2 and 3 no written statement has been filed nor any one has appeared on their behalf. In

the written statement filed on behalf of respondent No. 1 a preliminary objection has been raised that mere selection does not confer any legal right of appointment. Further stand taken is that the petitioners were selected against the anticipated vacancies and as such respondent No. 1 is not under any legal obligation to give approval to their appointments. It is asserted that no mandamus in this regard could be issued. It has further been claimed that at the time of selection of petitioners, transfer orders were not approved or implemented and the same were approved only on 20.3.1989, whereas meeting of Selection Committee was held on 15.11.1988 and 12.12.1988. Therefore, approval has not been granted by respondent No. 1. In this regard, copy of letter dated 9.6.1989 declining approval of appointment of lecturers, has been placed on record as Annexure R-1/1.

At the outset it is apposite to notice that on 23.8.1989, while admitting the instant petition, a Division Bench of this Court passed the following interim order:-

> " Admitted.
>
> There shall be an interim direction that the petitioners be provisionally approved as Lecturers in the College of respondent No. 3 so that it facilitates the drawing of their salaries, subject to the result of the writ petition.

On 21.8.2003, the instant petition was dismissed in default. Consequently a Civil Misc. Application No. 19241 of 2003 was filed under Order 9 Rule 9 read with Section 151 C.P.C. for

recalling order dated 21.4.2003. In para 3 of the aforementioned application it has been pointed out that in pursuance to interim order dated 23.8.1989, the State Government had accorded provisional approval to the appointment of the petitioners subject to the result of the writ. Accordingly, petitioner No. 2 (Ramesh Lal) has been working as Lecturer in respondent No. 3 college whereas petitioner No. 1 (Dharmendra Singh) has left the job on account of his appointment as Lecturer on regular basis in M.L.N. College at Yamunanagar. The writ petition was restored to its original number vide order dated 27.8.2003.

After hearing the learned State counsel and minutely perusing the record, I find that the principal reason to refuse grant of approval is instructions dated 23.12.1987 requiring respondent Nos. 2 and 3 to seek prior approval if appointment on regular basis was to be made. Accordingly, approval has been declined on the preposterous ground that on the date of their selection in November and December 1988 there was no clear cut vacancy. The order dated 9.6.1989 (R-1/1), passed by respondent No. 1 reads thus:

> " D.A.V. College Management Committee by transferring Sh. K.C. Kaushik, Lecturer Commerce and J.C. Verma, Lecturer Political Science working in your institution, assuming their posts to be vacant took action in filling them through the Selection Committee on 15.11.88 and 12.12.88 respectively. These transfers were approved by the Directorate on 20.3.89 in this way both the above lecturers were working in your

institutions upto this date. As a result of this, at the time of constituting the Selection Committee on 15.11.88 and 12.12.88, clear-cut vacancies of lecturers in Commerce and Political Science can not be accepted. In reality, these vacancies arise only after the approval of transfer of the above two lecturers by the Department on 20.3.89. Therefore, due to the Non-available (availability?) of Clear-cut vacancies at the time of constitution of Selection Committee, the selection reports can not be regularised."

It is undisputed that vacancies on account of transfer were anticipated and orders have already been passed by respondent Nos. 2 and 3. These transfers were waiting nod of approval from respondent No. 1, which was accorded on 20.3.1989. Accordingly, posts became available. It is probable that in pursuance to the aforesaid factual background that the Division Bench of this Court passed interim order on 23.8.1989 and consequently provisional approval was accorded by respondent No. 1 thereafter. It is clear that the selection made in anticipation of vacancies in November/December 1988 became available on 20.3.1989, when transfers of S/Shri J.C. Verma and K.C. Kaushik were approved by respondent No. 1. It, thus, emerges that respondent No. 1 eventually accorded approval to transfers of two lecturers causing the vacancies for which process appointment had started. On the one hand

respondent No. 1 dragged on the approval to transfers of two lecturers who were to cause vacancy and on the other it is arguing that there was no vacancy on the date of interview by Selection Committee. There is no rule of law that selection process must wait for vacancy to arise. The issue with regard to filling up anticipated vacancies had arisen before Hon'ble the Supreme Court in the case of **Union of India v. N.R. Banerjee, (1997) 9 SCC 287**, wherein the same has been accepted. Similar directions have been given by Hon'ble the Supreme Court even in the case of **Malik Mazhar Sultan v. U.P. Public Service Commission, (2006) 9 SCC 507** and further directions issued on 4.1.2007 in the form of clarifications. Therefore, the argument raised by respondent No. 1 is unsustainable in law and the same is hereby rejected.

In view of the above discussion, order dated 9.6.1989 (R-1/1) is hereby quashed. Accordingly, the interim order passed by this Court on 23.8.1989 is made absolute. Respondent No. 1 is directed to issue a fresh order according approval to the cases of the petitioners w.e.f. the date earlier order was issued. It has come on record that petitioner No. 1 Shri Dharmendra Singh has been appointed as Lecturer on regular basis in the M.L.N. College at Yamunanagar and has already left the job. However, the directions aforesaid would govern his case also as till the time he has worked. Accordingly he has to be regarded as Lecturer duly approved by respondent No. 1.

The writ petition stands disposed of in the above terms.

(M.M. KUMAR)
JUDGE

December 26, 2007
Pkapoor

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